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Of the Warm Springs Reservation of Oregon, Confederated Tribes
Umatilla Indian Reservation, and Yakima Nation

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NATIONAL WILDLIFE FEDERATION, et al.,

Plaintiffs

and,

STATE OF OREGON

Intervenor-Plaintiff

v.

NATIONAL MARINE FISHERIES SERVICE, U.S. ARMY CORPS OF ENGINEERS, and U.S. BUREAU OF RECLAMATION,

Defendants,

and

NORTHWEST IRRIGATION UTILITIES,

Case No. 01-0640-RE (Lead Case)
CV 05-0023-RE (Consolidated Cases)

DECLARATION OF GARY JAMES IN SUPPORT OF MEMORANDUM OF AMICI WARMS SPRINGS, UMATILLA, AND YAKAMA TRIBES IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT

PUBLIC POWER COUNCIL, WASHINGTON STATE FARM BUREAU FEDERATION, FRANKLIN COUNTY FARM BUREAU FEDERATION, GRANT COUNTY FARM BUREAU FEDERATION, STATE OF IDAHO, INLAND PORTS AND NAVIGATION GROUP, and KOOTENAI TRIBE OF IDAHO,

Intervenor-Defendants.

COLUMBIA SNAKE RIVER IRRIGATORS ASSOCIATION and EASTERN OREGON IRRIGATORS ASSOCIATION,

Plaintiffs,

v.

CARLOS M. GUTIERREZ, in his official capacity as Secretary of Commerce, NOAA FISHERIES, and D. ROBERT LOHN, in his capacity as Regional Director of NOAA FISHERIES,

Defendants.

I, GARY JAMES, HEREBY STATE AND DECLARE AS FOLLOWS:

1. My name is Gary James and I am employed as Fisheries Program Manager for the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), I have held this position for the last 26 years. I graduated from Oregon State University in 1979 with a B.S. in Fisheries Science.

2. As CTUIR Fisheries Program Manager since 1982, my work has been the planning, development (interagency and public coordination), implementation, operation and monitoring of complex (all-H) fisheries restoration programs. I discuss some of these programs below, organized by categories of work involved, in a sequence that follows project inception to completion. Some of these programs, such as the Umatilla and Walla Walla Basins where CTUIR has been the lead project sponsor (and I as their technical representative), are known as

Columbia Basin success models for working with stakeholders to reestablish lost salmon runs (see Attachment 1, "Umatilla and Walla Walla Basins Fisheries Restoration Programs").

3. The purpose of my declaration is to (1) advise the court of the "boots-on-the-ground" approach used in selecting actions for habitat enhancement and hatchery supplementation in the recent Memorandum of Agreement the CTUIR, Yakama Nation and the Confederated Tribes of the Warms Springs Reservation of Oregon entered into with the Action Agencies (Fish MOA); and (2) advise the court of the successes in increasing numbers of "natural" spawner returns that the CTUIR has observed resulting from carefully designed and implemented supplementation programs.

4. Too often these supplementation efforts are either ignored or derided, yet tribal supplementation programs are returning increasing numbers of natural spawners. My professional experience developing and implementing supplementation programs over more than 20 years tells me that carefully planned and executed supplementation is a way to increase viable natural spawners, particularly when used in conjunction with other habitat actions.

5. I offer no opinion on the hyper-technical debate over whether natural spawners from hatchery origins are good fish or bad fish for purposes of ESA listing - to me that is like arguing "red fish" over "blue fish". I only know that these hatchery-origin natural spawners become part of the listed population, and our findings, based on scientific comparisons in one subbasin, are that these fish are just as fit across all life stages as so-called "wild" fish.

Project Planning Experience

6. In 1984, I authored the first in a long series of subbasin plans (for the Umatilla, John Day and Grande Ronde Subbasins in NE Oregon and SE Washington) that formed the

backbone for identification of fisheries resource problems and project funding needs for numerous fisheries and land management entities (James 1984).

7. These plans were instrumental in selecting projects for the very first Columbia Basin Fish and Wildlife Program of the Northwest Power and Conservation Council (NPCC), and subsequent funding by Bonneville Power Administration (BPA).

8. The methodology for identifying resource problems and needs was to examine habitat and fish status at the local on-the-ground level, stream-by-stream. This necessarily involved extensive coordination with other local tribal, federal, state and private managers who also worked in those streams and were the most familiar with the specific habitat conditions.

9. As discussed more below, this "boots-on-the-ground" approach was used to identify and select habitat and hatchery projects for the Fish MOA.

10. I was also a key player in the additional NPCC subbasin planning efforts in 1990, 2000 and 2004 (CTUIR was the lead in developing Umatilla and Walla Walla basin plans).

11. Similarly, I continued my involvement in project planning by serving on the State of Washington's Recovery Board and NOAA's ESA Recovery Planning in 2006-2008.

12. All these efforts were similar in that they utilized habitat and fish status data to define problems and prescribe solutions. Importantly, each subsequent planning effort produced increasingly sophisticated data bases and models to use in identifying limiting factors and needs.

13. The Fish MOA project selection process built on and expanded these earlier efforts. The ability of the tribes to identify habitat projects and benefits grew from the wealth of information gained from decades of subbasin planning, supplemented and updated by new information we gathered working and living with these streams on a continual basis. The tribes' recent Fish MOA project selection process used the most current planning information. The

benefits estimates for these projects were assayed using the method described in the Declaration of Bob Rose.

14. I am confident that the best possible project planning occurred in the Fish MOA project selection process.

Project Development and Implementation

Fish Passage Improvements:

15. An example of a successful fish passage improvement project in which I played a major role in development an implementation is the Umatilla Basin Project. That project provides for enhanced flow in the Umatilla River through a water exchange with irrigators whereby Umatilla River water is left instream for fish. The project happened because traditional adversarial interests joined forces to support and secure benefits for both fish and agricultural interests. This project exemplifies the type of locally negotiated successes that CTUIR has implemented. The operations and maintenance of this cornerstone project is included in the Fish MOA.

16. The CTUIR also developed and implemented millions of dollars of specific fish passage improvements at irrigation diversions in the mid-to-lower Umatilla and Walla Walla Basins. Projects such as improved ladders at diversion dams and protective screening on diversion canals are key fish restoration components. Remaining projects of this type (along with operations and maintenance of existing projects) are included in the Fish MOA. The CTUIR has coordinated and promoted these projects with various irrigators who realize that cooperation for improved fish passage means less hassle for irrigation operations.

18. The CTUIR staff and its local on-the-ground-co-managers identified numerous other small passage blockages in mid-to-upper basin tributaries (road bridges, culverts,

abandoned small diversion structures, etc., sometimes referred to as "imminent threats") in subbasin planning efforts and many of the required fixes are also included in the Fish MOA.

19. Collectively, these projects will provide unimpeded fish access to an anticipated 100-200 plus of miles of habitat.

Habitat/floodplain Improvements:

20. As I intimated earlier, the largest category of CTUIR Fish MOA projects are habitat improvement actions.

21. The CTUIR Department of Natural Resources' Mission Statement emphasizes the need to provide good quality river and watershed habitat that will support and sustain tribal first food values. This has been the driving force in identifying and implementing habitat projects that promote natural floodplain function (hydrology, geomorphology, connectivity, riparian vegetation and aquatic biota).

22. Through extensive subbasin planning efforts and methods described above and in the Declaration of Bob Rose, habitat limiting factors and restoration needs were thoroughly identified prior to the MOA negotiations. The Fish MOA expansions for habitat enhancement actions were designed to address these limiting factors and needs.

23. In addition, the monitoring of past actions, along with coordination with local landowners, allowed the CTUIR to fine tune the approaches and target priority areas for proposed projects.

24. The MOA increased funding for habitat enhancement threefold. Over the 10-year MOA period, habitat improvements are expected to occur in more than 200 stream miles in the Umatilla, Walla Walla, John Day, Grande Ronde and Tucannon subbasins.

Hatchery/Supplementation:

25. Hatchery actions have been a key component of CTUIR co-managed fish restoration programs. Supplementation projects have been used to reintroduce extirpated populations and to boost declining or depressed populations. The impacts of human-induced fish mortalities occurring during a salmon's journey to the ocean and back has most often resulted in two spawners not replacing themselves. This deficit adult return situation has required that managers consider an artificial tool such as hatcheries to boost smolt numbers and achieve greatly improved adult-to-adult return rates.

26. The CTUIR operates a total of 11 hatchery satellite facilities located in the Umatilla, Walla Walla and Grande Ronde Basins. The facilities are utilized to acclimate and release juvenile fish in natural production areas and to hold and spawn adults used for broodstock.

27. The hatchery programs are implemented in a diverse manner according to specific subbasin situations and management objectives. Examples of successful CTUIR hatchery reintroduction/supplementation efforts have occurred in all three of our subbasins.

28. With the Fish MOA funding secured, these projects are more than reasonably certain to continue. In addition, a new facility will be constructed in the Walla Walla Basin following Section 7 ESA consultation. These existing projects and their results are described below.

UMATILLA BASIN:

29. The CTUIR used aggressive hatchery programs in the Umatilla Basin to reintroduce salmon and supplement the existing ESA-listed steelhead population. An average annual return of 14,000 salmon today (resulting from BPA plus all other funding sources)

replaces a run that was extinct for nearly a century. Benefits of continued Fish MOA funding of hatchery programs in the Umatilla Basin are estimated to be 7,000 returning salmon/steelhead per year.

30. The spring Chinook program has been the most successful with annual returns rebuilding to 4,000-5,000 fish (Figure 1). The program originally used Carson stock for reintroduction, but now has sufficient Umatilla returns for its own broodstock. The success of this program is demonstrated by the approximately 1,000 spring Chinook that spawn naturally in the upper Umatilla River annually and deposit about 2 million eggs (Contor 2008). This program has also allowed for Indian and non-Indian salmon fisheries in the Umatilla River during 15 out of the last 19 years.

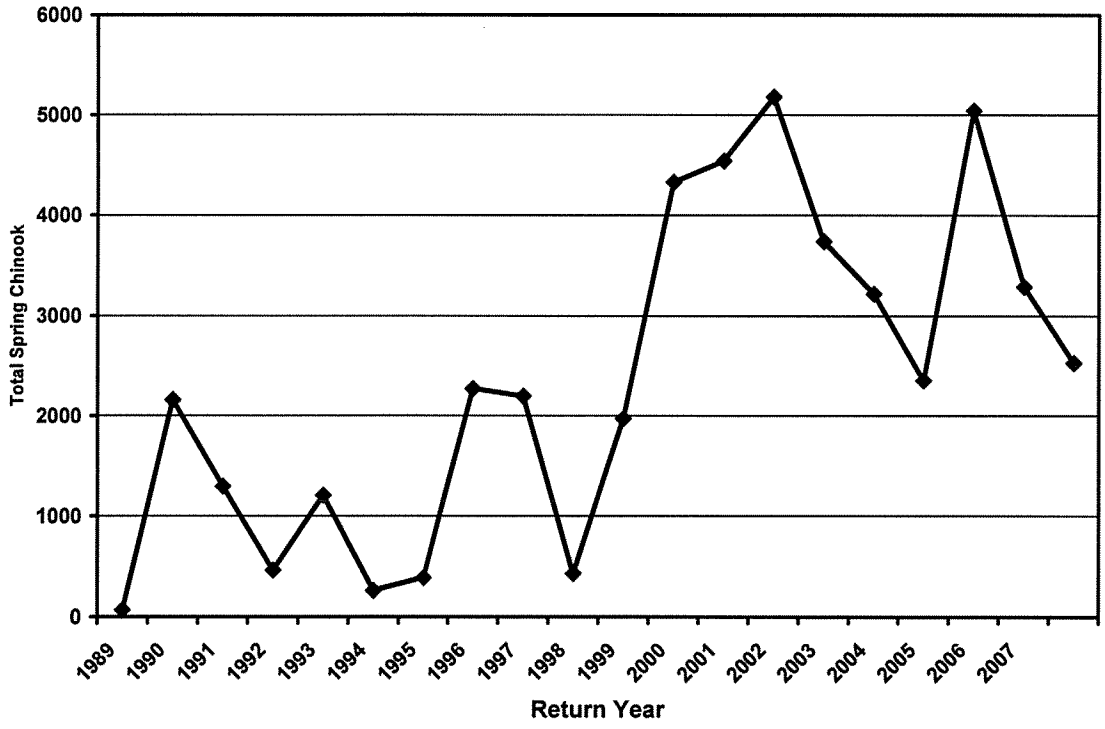

Figure 1 Adult and jack spring Chinook salmon returning to Three Mile Falls Dam, Umatilla River (1989-2008)

31. The CTUIR also has a Umatilla steelhead supplementation program. This supplementation program has produced a slightly higher total and natural abundance ratio in the Umatilla compared to the neighboring John Day subbasin, which has no steelhead supplementation (CTUIR and ODFW 2007). This indicates that the presence of a hatchery supplementation program has not negatively impacted this listed stock. Moreover, the Umatilla provides an annual catch and keep fishery, which the John Day does not.

32. Regarding Umatilla supplementation programs, Phillips (et al. 2000) stated that the mean adult-to-adult return rate of hatchery-reared steelhead exceeded replacement and that of the naturally-spawning population. Although the smolt-to-adult survival rates of hatchery-reared fish fluctuate, salmonid escapement has increased in recent years, permitting steelhead and spring chinook harvest. Enumeration of potential spawners and observed redds reveals an increase in natural production of all supplemented species.

WALLA WALLA BASIN:

34. Recent hatchery reintroduction of spring Chinook in the Walla Walla Basin by CTUIR has resulted in increasing returns of up to 500 fish (Figure 2) in only a few years. This run was also extirpated for most of the last century.

35. The first outplanting of adult hatchery fish into vacant Walla Walla River habitat in 2000 resulted in near-replacement level of 350 **naturally produced** adults returning in 2004 (Mahoney et al. 2006). Significantly, the habitat quality in that reach was quite good. This initial result indicates to me that even first generation naturally produced fish (from hatchery parents spawning in the wild) can be very productive in high quality habitat. Our efforts in the Walla Walla will continue and expand under the Fish MOA.

36. With MOA funding, we anticipate construction and start-up of a new spring Chinook hatchery in 2011/2012. We expect that program will increase hatchery returns to 2,750 spring Chinook annually which will be available to seed natural production areas and provide fisheries. The Walla Walla Hatchery Master Plan is currently under NPCC/ISRP review.

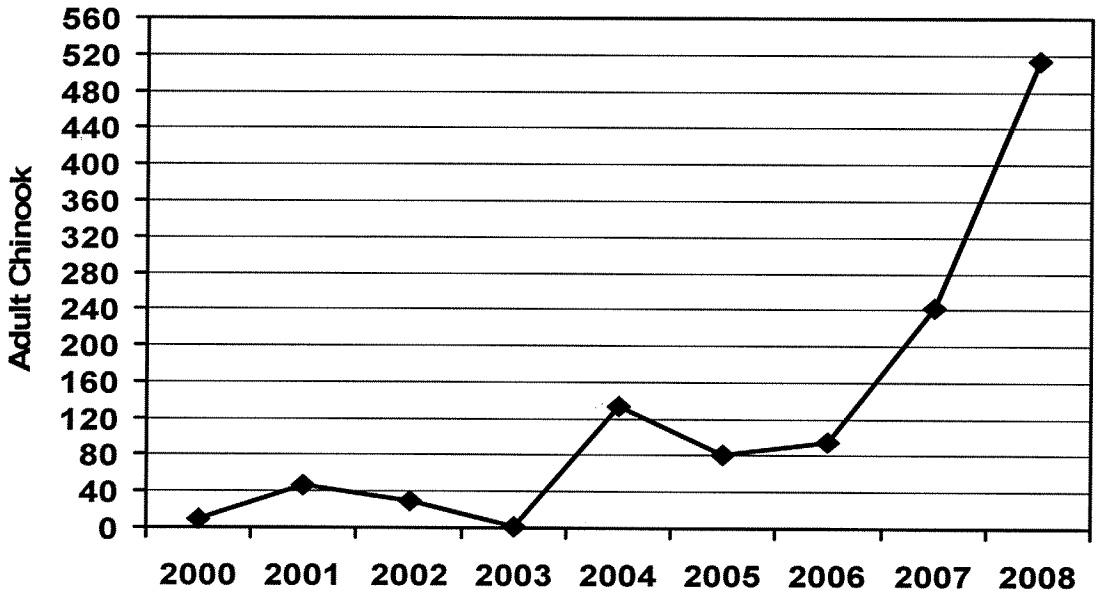

FIGURE 2. Spring Chinook Returns to Walla Walla River at Nursery Bridge Dam (2000-2008; does not include all Walla Walla returns such as Mill Creek)

GRANDE RONDE BASIN:

37. Another example of successful hatchery supplementation by CTUIR occurred in Lookingglass Creek in the Grande Ronde Basin in the mid-1990's. Rapid River stock was used to reintroduce spring Chinook following extirpation of the endemic stock. The survival success of the reintroduced hatchery stock was compared to other endemic populations being studied in the Grande Ronde Basin as well as the now-extinct Lookingglass Creek stock which was studied in the 1960's. Many would consider the results startling, but they are consistent with the near-replacement findings as described above in the Walla Walla Basin. The results showed that the

first generations of naturally produced non-endemic stock (hatchery fish spawning in the wild) **demonstrated similar survivals compared to endemic populations across all life history stages** (adults per redd, juveniles per redd, smolt timing and survival rate to Lower Granite Dam, and next generation adult returns back to Lookingglass Creek – McLean and Lofy 1998, 1999).

38. Despite such success, NOAA required this program to be discontinued and replaced with local stock from the nearby Grande Ronde tributary, Catherine Creek, as NOAA was concerned about straying and potential genetic risks to local ESA listed stocks.

39. The Fish MOA includes implementation and evaluation of the continuing Lookingglass reintroduction program and spring Chinook supplementation programs in other Grande Ronde tributaries - the upper Grande Ronde River and Catherine Creek.

40. In addition, CTUIR included a safety net hatchery project that will ensure that the hatchery program for the upper Grande Ronde River (the tributary with the lowest returns) will have adequate eggs to continue the scheduled hatchery program if adult returns go down.

41. The CTUIR would like to consider hatcheries as stop-gap actions to prevent more fish extinctions and declines while other major survival benefits are realized. However, before those benefits become a reality (sufficient natural returns to meet natural production and harvest goals), we believe that implementation of customized hatchery supplementation programs should continue in most mid-to-upriver locations. The CTUIR is regularly working with various co-managers and science review groups to make adaptive improvements in all the above described hatchery programs.

PROJECT MONITORING AND EVALUATION

42. Monitoring and evaluation (M&E) projects are a critical component of the CTUIR Fish MOA. Indeed, the Fish MOA increases these projects by approximately 50%. These projects are needed to collect data and inform future actions. It will be imperative that managers continue to understand the results of implementing restoration projects. Most importantly, M&E will inform managers on how to adapt and improve programs based on determinations of successes or failures.

LAMPREY AND MUSSEL RESEARCH & RESTORATION

43. The CTUIR has been a Columbia Basin leader in conducting research and restoration of Pacific lamprey and freshwater mussels. Restoration has involved study of population status, life history and transplantation to extirpated locations accompanied by monitoring of survival and natural production success. Included in the Fish MOA is continuance of these unique projects which are not being done anywhere else in the Columbia Basin. It is hoped that the successful findings will have broad application to benefiting lamprey and mussel populations Columbia Basin wide.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 24th day of September, 2008.

s/Gary James
GARY JAMES

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I hereby certify that I served the foregoing **DECLARATION OF ROBERT ROSE** on:

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by causing a full, true, and correct copy thereof to be sent by the following indicated method or methods, on the date set forth below:

☐ by mailing in a sealed, first-class postage-prepaid envelope, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service at Bend, Oregon.

☐ by hand delivery.

☐ by sending via overnight courier in a sealed envelope.

☐ by faxing to the attorney at the fax number that is the last-known fax number for the attorney's office.

☒ by electronic service pursuant to LR 100.7.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 24th day of September, 2008.

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